

FinCEN Issues Final Rule Imposing a Prohibition on the Opening or Maintaining of Correspondent Accounts for, or on Behalf of, FBME Bank Ltd.

On July 29, 2015, FinCEN published in the Federal Register a Final Rule imposing a prohibition on U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, FBME Bank Ltd. (FBME) under the fifth special measure of Section 311 of the USA PATRIOT Act, with an effective date of August 28, 2015. On August 27, 2015, the United States District Court for the District of Columbia granted FBME's motion for a preliminary injunction and enjoined the Final Rule from taking effect. On November 6, 2015, the court granted FinCEN's motion for voluntary remand to allow for further rulemaking proceedings. On November 27, 2015, FinCEN published in the Federal Register a Notice to re-open the Final Rule for 60 days to solicit additional comment in connection with the rulemaking, particularly with respect to the unclassified, non-protected documents that supported the rulemaking, and whether any alternatives to the prohibition on the opening or maintaining of correspondent accounts for FBME would effectively mitigate the money laundering and terrorist financing risk associated with FBME. FinCEN also made available for comment on www.regulations.gov the unclassified, non-protected material that FinCEN considered and intended to rely upon during the rulemaking proceeding.

After re-opening the comment period, FinCEN considered all of the special measures available to it under Section 311, as well as conditions rather than a prohibition under the fifth special measure, and concluded that a prohibition under the fifth special measure is the appropriate choice. Accordingly, FinCEN is issuing a [final rule](#) imposing a prohibition on U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, FBME in place of the rule published on July 29, 2015. FinCEN's imposition of a prohibition under the fifth special measure will guard against the international money laundering and terrorist financing risks that FBME poses to the U.S. financial system. This rule will take effect 120 days from the date of publication in the Federal Register.